UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

OFFICE OF POLICY, ECONOMICS, AND
INNOVATION

Dear Performance Track Member:

We are pleased to invite you to a one-day workshop to learn more about the flexible air permitting incentive announced by former Environmental Protection Agency (EPA) Administrator Christine Todd Whitman at the Performance Track Annual Members Event on April 9, 2003. The purpose of the workshop is to introduce members to flexible permitting and to help them evaluate the potential benefits of having such a permit.

Flexible permits are currently available on a pilot basis in partnership with EPA and State permitting authorities. In the next year, EPA intends to work with a limited number of Performance Track facilities to design and issue approximately three permits. As we determine interest and applicability, we intend to provide additional opportunities in the future to develop these permits.

EPA's Office of Policy, Economics, and Innovation (OPEI) and EPA's Office of Air and Radiation (OAR) are hosting this workshop in Dallas, Texas on November 4, 2003, at EPA's Region 6 office. The workshop is open to interested Performance Track members and has been scheduled to coincide with the Performance Track Participants Association annual meeting on November 5th.

Based on our experience from pilots undertaken through our Pollution Prevention in Permitting Program (P4) (see enclosure for summary), we learned that the sources that generally make good candidates for flexible permits have some of the following characteristics: (1) need for greater certainty under conditions of dynamic growth; (2) face the recurring need to make permit revisions and to obtain new source permits; (3) already possess or are willing to add technical capacity to operate under a plantwide emissions cap; and (4) have an understanding of the types of advance-approved changes required by the facility in order to minimize the need for future permit actions. If you believe your facility meets these criteria or you would like more information about this incentive, we urge you to attend this workshop.

The objectives of the workshop are the following:

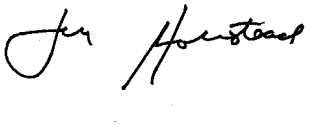
- familiarize Performance Track members with the flexible air permitting incentive and plans for the next year;
- provide information about and examples from flexible air permits established through previous EPA sponsored pilot projects, including both environmental and economic results;
- present a Performance Track facility's perspective on flexible air permitting (e.g., 3M is currently working with EPA and state regulatory authorities to design flexible air permits); and
- provide insight into how to assess Performance Track members' interest in, and suitability for, flexible air permitting.

We recommend that your company's environmental manager and an expert in air permitting issues for your facility consider attending this workshop. Following the workshop, we will be contacting you to learn more about the specifics of your facility and, if appropriate, soliciting a commitment from those Performance Track members interested in working further with EPA and State permitting authorities to design a flexible air permit.

If you are interested in participating in this workshop, please notify Bob Sachs, Performance Track Incentives Coordinator, by October 10, 2003, at 202-566-2884 or at sachs.robert@epa.gov. Depending on the level of interest, participation may be limited at this first workshop, but we intend to provide additional workshops as needed to inform interested Performance Track members. We hope you will attend this workshop to learn more about the potential environmental and economic benefits of flexible air permits for your company.

Sincerely,

Jessica L. Furey
Associate Administrator
Office of Policy, Economics, and Innovation



Jeffrey R. Holmstead
Assistant Administrator
Office of Air and Radiation

Enclosure

Pollution Prevention in Permitting Program (P4) Flexible Permit Pilots

(Excerpted from the "Evaluation of Implementation Experiences with Innovative Air Permits."
For the full report, see http://www.epa.gov/nsr/nsr-analysis.pdf , (pp. 17 - 64.)

Background

In recent years, the U.S. Environmental Protection Agency (EPA) and some State and local permitting authorities recognized a change in the manufacturing landscape. This change arose in today's increasingly competitive global markets, requiring companies to respond rapidly to market signals and demand, while delivering products faster, at lower cost, and of equal or better quality than their competitors. As their market response and product development time frames shrank, companies in several industries perceived the potential administrative "friction" – costs, time, delay, uncertainty, and risk – resulting from operating under conventional air permitting approaches to increase. This raised an important question: how to provide these U.S. companies with the "flexibility" to compete effectively in global markets without decreasing environmental protection? At the same time, the EPA and others sought ways to align the regulatory framework to encourage emissions reduction and pollution prevention.

To address these challenges, the EPA and several State and local permitting authorities worked with selected companies over the past few years in the context of individual permit pilots to develop innovative approaches to air permitting. The EPA and the States launched these efforts to increase sources' operational flexibility while ensuring environmental protection and facilitating pollution prevention. Permitting authorities involved in these pilot initiatives designed permits within the existing regulatory framework to address all applicable air requirements. As interest in innovative approaches to air permitting increased, the EPA evaluated the implementation experience with "flexible" permitting techniques developed under pilot permitting efforts, such as the EPA's Pollution Prevention in Permitting Program (P4) and various State innovation initiatives. The EPA believes that careful evaluation of the implementation experience with such flexible permits can improve the effectiveness and efficiency of future efforts and help to inform evolving air policymaking activities in these areas.

What is Flexible Air Permitting?

The term "flexible permit" is used to describe air permits with conditions designed to reduce the administrative "friction" – costs, time, delay, uncertainty, and risk – experienced by sources and permitting authorities when implementing a permit or making certain changes under the permit. This is typically accomplished by allowing a source to make certain types of changes (e.g., modifications to a source's method of operation, equipment, raw materials, emission factors, or monitoring parameters) without requiring additional case-by-case permitting, provided the source meets certain criteria outlined in its operating or construction permit. Such criteria might include the

maintenance of plant-wide emissions levels below enforceable caps. Over the past decade, the EPA and State and local permitting authorities have also piloted specific permitting techniques and tools to accomplish advance-approval for certain types of changes that might take place over the course of a permit term.

Flexible Permit Implementation Review Findings

EPA conducted in-depth reviews of six pilot permits with innovative flexibility provisions and sufficient operating history. These pilot permits were developed for the following companies: 3M, DaimlerChrysler, Imation, Intel, Lasco Bathware, and Saturn. The reviews included detailed analyses of source and permitting authority experiences developing and implementing flexible air permits based on review of information in the public record, discussions with source and permitting authority personnel, site visits to the source and permitting authorities, and verification of record keeping and emissions calculation requirements. The EPA's review and analyses support the following findings for the six flexible permits covered in this review.

Finding 1: The flexible permits contain adequate measures to assure compliance with all applicable requirements. Permitting authorities and the EPA found that the flexible permits contained monitoring, record keeping, and reporting mechanisms sufficient to assure that identified regulatory requirements are met and that appropriate measures are in place.

Finding 2: The flexible permits were considered by be enforceable by permitting authorities and EPA. The six permitting authorities involved in the pilots all reported the ability to detect non-compliance with flexible permit conditions and to enforce the permit requirements, and expressed certainty that permit requirements could be enforced, had the need arisen.

Finding 3: The flexible permits facilitated and encouraged emissions reductions and pollution prevention. The flexible permits contain mechanisms designed to facilitate and encourage emissions reductions and pollution prevention (P2). Five of the sources with flexible permits lowered actual plant-wide emissions during their permit terms, and the sixth source lowered its emissions per unit of production during the permit term.

Finding 4: Companies with the flexible permits believe that air permitting is on their critical response path. Each of the sources with flexible permits reported that conventional permitting approaches can constrain their ability to compete effectively. The combination of increasingly globalized competition and a shift to new modes of production substantially increased the pressure to operate highly flexible, nimble, and responsive research, development, and production operations.

Finding 5: Companies with the flexible permits utilized their flexibility provisions. Flexibility provision utilization during the permit terms exhibited rates and types of

changes consistent with the needs expressed by the companies during permit development.

Finding 6: The flexible permits enhanced information sharing between the companies and permitting authorities. The flexible permits provided a more comprehensive, up-front picture of anticipated operational activities and associated environmental performance than a conventional permitting process.

Finding 7: The flexible permits generally provided to the public equivalent or greater information than conventional permits. For all six permits, the permitting authorities indicated that, on balance, the flexible permits improved the availability of information to the public, ensuring the flow of significant and meaningful information regarding the current status and future direction of operations and emissions.

Finding 8: The flexible permits produced or are anticipated to produce net financial benefits to companies and permitting authorities. Companies and permitting authorities reported that the flexibility provisions decreased, or are expected to decrease, the administrative costs of operating under the permit to more than offset the initially higher permit development costs.

Finding 9: Permitting authorities are generally supportive of flexible permits as an option. The six permitting authorities involved in the flexible permits indicated that they are pleased with the environmental and administrative benefits of the permits.

Finding 10: Permitting authorities indicated that flexible permit provisions should be matched with a company's need for flexibility and technical capacity to implement effectively its flexible permit requirements. Permitting authorities believe that flexible permits may not be appropriate for all sources. First, the company should be able to demonstrate that it has a sufficient need for the flexibility to justify the additional up-front permitting authority time and resources required to develop flexible permit provisions for the company. Second, the company should exhibit the technical capacity to operate effectively under a flexible permit.